

REMARKS

Applicants appreciate the Examiner's thorough review of the present application, and respectfully request reconsideration in light of the preceding amendments and the following remarks.

Claims 1-27 are pending in the application. The original claims have been amended only to improve claim language and to avoid potential indefiniteness issues. Claims 13-27 have been added to provide Applicants with the scope of protection to which they are believed entitled. No new matter has been introduced through the foregoing amendments.

The claim objection is believed overcome in view of the above amendments.

The obviousness rejections of claims 1-12 as being obvious over *JP-H08-196565* in view of *Bruemmer* are traversed, because *JP-H08-196565* and *Bruemmer* are not properly combinable in the manner the Examiner proposed.

The Examiner admitted that *JP-H08-196565* does not disclose the claimed cavity formed in the transversely middle region of the basic absorbent batt structure. The Examiner noted the *Bruemmer* disclosure of an absorbent article having a cavity in the absorbent core. The Examiner then argued that it would have been obvious to modify the *JP-H08-196565* absorbent with a cavity for the benefits disclosed in *Bruemmer*, i.e., in the combined article, fecal matter is kept in the lowest part of the absorbent and is prevented from soiling the wearer's skin. Applicants respectfully disagree from the following reasons.

First, the Examiner's stated suggestion or motivation (highlighted above) is deemed insufficient, because the benefits disclosed in *Bruemmer* have already been obtained in the *JP-H08-196565* article. See Abstract of *JP-H08-196565*, the Object section. See also attached Exhibit A which is an accurate English translation of *JP-H08-196565*. The skilled artisan would not have

made the Examiner's proposed combination unless an additional advantage would be achieved in the combined device. The language of the Office Action clearly fails to specify such additional advantage, if any.

Second, *JP-H08-196565* teaches away from the proposed combination with *Bruemmer*. If *JP-H08-196565* and *Bruemmer* were to be combined in the manner the Examiner proposed, the resulting article would have an absorbent core (18/20, FIG. 4 of *Bruemmer*) with a hole (22, FIG. 4 of *Bruemmer*). The resulting article would also include a topsheet with a cutout portion (12, FIG. 8 of *Bruemmer*) to allow fecal matter to enter the hole. In this structure, the side walls of the absorbent core (18/20, FIG. 4 of *Bruemmer*) would be exposed which might cause migration of the superabsorbent material. According to *JP-H08-196565*, even if the core is wrapped with tissue paper, the strength of the tissue paper is generally low and therefore the tissue paper cannot effectively prevent migration of the superabsorbent material. See paragraph [0003] of the translation in Exhibit A. Thus, the resulting article would have a structure inferior to the structure of *JP-H08-196565*. The skilled artisan upon learning of the teaching of *JP-H08-196565* would have been led away from the Examiner's proposed combination.

Third, the applied reference do not teach or suggest all the claim limitations. Indeed, even if *JP-H08-196565* and *Bruemmer* were properly combinable in the manner the Examiner proposed, the resulting article would not necessarily have an excrement-receiving space formed between said supplementary absorbent batt structure and said cavity, and said supplementary absorbent batt structure partially covering said upper opening of said cavity, as presently claimed in claim 1. The language of the Office Action does not specify why a skilled artisan would have provided the *JP-H08-196565* article with a cavity in the region beneath the upper absorbent cores 20A and 20B. In contrast, considering the disclosed hole of *Bruemmer* with straight vertical walls (68, FIG. 4 of *Bruemmer*), the skilled artisan would have confined the cavity to only the region below the gap between inner ends 22, 23 of the *JP-H08-196565* upper absorbent cores 20A and 20B. Such a

resulting article would clearly fail to teach or disclose the above mentioned limitations of claim 1.

For the foregoing reasons, Applicants respectfully submit that the *35 U.S.C. 103(a)* rejection of claims 1-12 is inappropriate and should be withdrawn.

Of particular note, the disadvantages of the *JP-H08-196565* article discussed in the specification are Applicants' own observations and cannot be used against the claims of the instant application.

The obviousness rejection of claims 11-12 is further traversed because *Reising* (U.S. Patent No. 4,988,345) is not properly combinable with *JP-H08-196565* and *Bruemmer*. In *Reising*, multiple acquisition apertures 56 are provided so that the liquid handling layer 50 can be positioned immediately subjacent the topsheet 38. *See* column 10, lines 22-26 of *Reising*. A person of ordinary skill in the art would not have been motivated to modify the *JP-H08-196565/Bruemmer* combined article with the *Reising* acquisition apertures, because the topsheet of the combined article would still be spaced from the lower core layer by the thickness of the upper core layer.

New independent claim 13 is patentable over the applied references, because the references singly or in combination fail to disclose, teach or suggest a disposable diaper, comprising: a lower absorbent structure having, on an upper side thereof, a depressed region defining a cavity and an elevated region extending around the depressed region; and a separate, upper absorbent structure placed on top of said lower absorbent structure so as to partially cover an upper opening of said cavity; wherein a part of said upper opening uncovered by said upper absorbent structure defines an inlet leading into an excrement receiving space defined by said cavity below said upper absorbent structure. As argued above, *JP-H08-196565* and *Bruemmer* are not properly combinable in the manner the Examiner proposed, and *JP-H08-196565* teaches away from the proposed combination with *Bruemmer*.

Claims 14-27 depend from claim 13, and are considered patentable at least for the reason advanced with respect to claim 13. Claims 14-27 are also patentable on their own merits since these claims recite other features of the invention neither disclosed, taught nor suggested by the applied art.

For example, as to claims 16-17, the applied references fail to disclose, teach or suggest that said elevated region **completely surrounds** the depressed region. *See* element 20 in FIG. 8 of *Bruemmer* and FIG. 1 of *JP-H08-196565*.

As to claim 18, the applied references fail to disclose, teach or suggest that the peripheral portions of said liquid-pervious sheet extending outwardly beyond edges of said absorbent body are **overlaid and joined to each other, as well as to the lower absorbent structure.**

As to claim 20, the applied references fail to disclose, teach or suggest that the topsheet is in **direct physical contact** with the absorbent body throughout an **entire upper surface** of said lower absorbent core.

As to claims 21 and 27, the applied references fail to disclose, teach or suggest that the cavity has a bottom and side walls extending upwardly from the bottom, and the topsheet is in **direct physical contact with the bottom and side walls of the cavity.**

Each of the Examiner's rejections has been traversed. Accordingly, Applicants respectfully submit that all claims are now in condition for allowance. Early and favorable indication of allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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